

UNITED STATES BANKRUPTCY COURT <u>Southern</u> <u>Houston Division</u> DISTRICT OF <u>Texas</u>		<b>PROOF OF CLAIM</b> For your claims to be processed correctly, please provide an <b>ORIGINAL WITH TWO COPIES</b> and a <b>SELF-ADDRESSED STAMPED ENVELOPE</b> . DISTRICT OF TEXAS FILED SEP 28 2000 AM Michael N. Milby, Clerk THIS SPACE IS FOR COURT USE ONLY
Name of Debtor <u>Stage Stores, Inc. a Delaware corporation</u> <u>Specialty Retailers, Inc., a Texas corporation</u> <u>Specialty Retailers, Inc., (NV), a Nevada Corporation</u>		
Case Number: <u>00-35078-12-11 (J.A.)</u> <u>00-35078-12-11</u> <u>00-35080-12-11</u>		
NOTE: This form should not be used to make a claim for an administrative expense incurred after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): <u>Angela Boutte</u>	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	THIS SPACE IS FOR COURT USE ONLY
Name and address where notices should be sent: <u>Clint Bischoff</u> <u>Attorney at Law</u> <u>P. O. Box 151</u> <u>Elmwood, LA 70535</u> Telephone number: <u>(337) 457-3352</u>	Account or other number by which creditor identifies debtor:	
Check here <input type="checkbox"/> replaces if this claim <input type="checkbox"/> amends a previously filed claim, dated: _____		
1. Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input checked="" type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input type="checkbox"/> Other _____		
2. Date debt was incurred: <u>August 9, 1998</u>		3. If court judgment, date obtained:
4. Total Amount of Claim at Time Case Filed: <u>\$ 685,388.38</u> (See addendum for explanation) If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		THIS SPACE IS FOR COURT USE ONLY
5. Secured Claim. <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____	6. Unsecured Priority Claim. <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4300)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$1,950* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other Specify applicable paragraph of 11 U.S.C. § 507(a)(____). <small>*Amounts are subject to adjustment on 4/1/98 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>	
7. Credits: The amounts of all payments on this claim has been credited and deducted for making this proof of claim.		
8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If documents are not available, explain. If the documents are voluminous, attach a summary.		
9. Date-Stamped Copy: To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		THIS SPACE IS FOR COURT USE ONLY  1547
Date <u>26</u> day of <u>September</u> , 2000	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): <u>Clint D. Bischoff, Attorney at Law</u>	
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.		
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<b>UNITED STATES BANKRUPTCY COURT</b> <u>Southern</u> <b>Houston Division</b> <b>DISTRICT OF</b> <u>Texas</u>		<b>PROOF OF CLAIM</b>  For your claim to be processed correctly, please provide an <b>ORIGINAL WITH TWO COPIES</b> and a <b>SELF-ADDRESSED STAMPED ENVELOPE</b> .  <b>UNITED STATES BANKRUPTCY COURT</b> <b>SOUTHERN DISTRICT OF TEXAS</b> <b>FILED</b>  <b>SEP 28 2000 AM</b>  <b>Michael N. Milby, Clerk</b>  THIS SPACE IS FOR COURT USE ONLY
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<b>2. Date debt was incurred:</b> <u>August 9, 1998</u>		<b>3. If court judgment, date obtained:</b>
<b>4. Total Amount of Claim at Time Case Filed:</b> \$ <u>685,388.38</u> (See addendum for explanation) If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
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Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.		

## **ADDENDUM**

Attached as Exhibit "A" to this proof of claim is a copy of the original petition for damages which sets forth the essential facts relating to an accident on or about August 9, 1998, whereby the claimant, Angela Boutte, was injured due to the fault of Specialty Retailers, Inc. d/b/a Stage Stores, Inc.

Attached as Exhibit "B" is a copy of a settlement proposal that was extended to the defendant via the liability insurer of Specialty Retailers, Inc. d/b/a Stage Stores, Inc., who is CNA Insurance Company, Inc.

It is believed that there is a \$150,000.00 self-insured retention under the terms of the insurance policy which has not yet been produced by the insurance company. Under Louisiana law, which is applicable in the tort lawsuit, the claimant is entitled to judicial interest from date of judicial demand, November 30, 1998. On the date of filing for bankruptcy relief, June 1, 2000, the uninsured liquidated liability of Specialty Retailers, Inc. d/b/a Stage Stores, Inc. amounted to \$165,583.90 (\$150,000.00 self-insured retention plus \$15,583.90 in judicial interest). Judicial interest is computed between November 30, 1998 and June 1, 2000, employing a 7.6% per annum interest rate for 1998, a 6.73% per annum interest rate for 1999, and 7.285 per annum interest rate in 2000, in accordance with Louisiana law. Because of the extent of damages, which far exceed the self-insured retention, claimant submits that the uninsured portion of the liability of the debtor-in-possession is a liquidated unsecured claim.

In the settlement proposal, Exhibit "B", the claimant estimated the full amount of damages to be \$710,290.31. This offer included, however, legal interest through November 30, 2000. The full amount of damages, up until June 1, 2000, amounts to \$685,388.38. Although insurance is believed to exist with respect to that liability which exceed the self-insured retention amount, the debtor-in-possession, is nonetheless liable, individually and solidarily, for such amounts. The best estimate of the unliquidated portion of the unsecured claim is \$519,804.48. The total pre-petition unsecured claim is estimated to \$685,388.38.

## EXHIBIT “A”

ANGELA BOUTTE, INDIVIDUALLY  
AND ON BEHALF OF HER MINOR  
CHILDREN, DUSTIN BOUTTE and  
KRISTEN BOUTTE

X CIVIL DOCKET NO.: 90117-C

VERSUS

X 16TH JUDICIAL DISTRICT COURT

SPECIALTY RETAILERS, INC.  
d/b/a STAGE STORES, INC.

X IBERIA PARISH, LOUISIANA

**PETITION FOR DAMAGES AND  
REQUEST TO PROCEED IN FORMA PAUPERIS**

The Petition of ANGELA BOUTTE, INDIVIDUALLY AND ON BEHALF OF  
HER MINOR CHILDREN, DUSTIN BOUTTE and KRISTEN BOUTTE, a major  
competent resident of and domiciled in Iberia Parish, Louisiana, with respect represents  
that:

I.

Made Defendant herein is

1. SPECIALTY RETAILERS, INC. d/b/a STAGE  
STORES, INC., a foreign corporation authorized to do and  
doing business in the State of Louisiana whose agent for  
service of process is CT Corporation Systems, 8550 United  
Plaza Blvd., Baton Rouge, LA 70809,

who is liable unto Petitioners for such damages as are reasonable in the premises,  
together with legal interest thereon from date of judicial demand until paid and for all  
costs of these proceedings for the following, to-wit:

II.

Upon information and belief, SPECIALTY RETAILERS, INC. d/b/a STAGE  
STORES, INC. (STAGE) is a self-insured corporation with no insurance policy that  
would provide coverage for this accident.

III.

On or about August 9, 1998, ANGELA BOUTTE was shopping at the STAGE  
store at 911 East Admiral Doyle Drive, New Iberia, Louisiana.

IV.

## V.

The accident referred to above, and the resulting injury and damages, were caused solely and proximately by the fault and negligence of SPECIALTY RETAILERS, INC., d/b/a STAGE STORES, INC., which fault and negligence consisted of the following:

- A. In failing to use reasonable care to keep the premises free of hazardous conditions;
- B. In failing to properly inspect the clothing racks;
- C. In failing to establish proper procedures for inspection;
- D. In failing to properly load the clothes rack; and
- E. Other acts of fault or negligence which will be proved at the trial of this matter.

## VI.

As a result of this accident, ANGELA BOUTTE sustained severe and disabling injuries, including a disc injury to her back. ANGELA BOUTTE was forced to incur medical expenses and shall continue to incur same in the future. ANGELA BOUTTE is therefore entitled to damages for physical pain and suffering, mental anguish, disability, medical expenses and loss of enjoyment of life, loss of wages, all past, present and future, and for other such damages as are reasonable in the premises, with legal interest thereon from date of judicial demand until paid and for all costs of these proceedings.

## VII.

DUSTIN BOUTTE and KRISTEN BOUTTE are the minor children of ANGELA BOUTTE. DUSTIN BOUTTE and KRISTEN BOUTTE have both suffered a loss of consortium because of the injuries to ANGELA BOUTTE and are entitled to be compensated under Louisiana law.

## VIII.

Petitioner, ANGELA BOUTTE, is a citizen of the State and due to her poverty and lack of means is unable to pay the present and future costs of this litigation in

RETAILERS, INC. d/b/a STAGE STORES, INC., be served with a certified copy of the petition and after due proceedings are had, there be judgment herein in favor of Petitioners, and against Defendant, for such damages as are reasonable in the premises, with legal interest thereon from date of judicial demand until paid, and for all costs of these proceedings.

Petitioner further prays for all general and equitable relief and for all Orders that are necessary under the circumstances.

RESPECTFULLY SUBMITTED:

ROBERT K. GUILLORY & ASSOCIATES

BY:

  
Clint D. Bischoff

Bar Roll No. 21479

128 Demanade Blvd., Ste. 300

Post Office Box 53478

Lafayette, LA 70505-3478

(318) 234-0500

ATTORNEYS FOR ANGELA BOUTTE

SERVICE INSTRUCTIONS:

1. SPECIALTY RETAILERS, INC.  
d/b/a STAGE STORES, INC.  
Through its Agent for Service of Process:

CT CORPORATION SYSTEMS  
8550 United Plaza Blvd.  
Baton Rouge, LA 70809

ANGELA BOUTTE, INDIVIDUALLY  
AND ON BEHALF OF HER MINOR  
CHILDREN, DUSTIN BOUTTE and  
KRISTEN BOUTTE

X CIVIL DOCKET NO.: 90117

VERSUS

X 16TH JUDICIAL DISTRICT COURT

SPECIALTY RETAILERS, INC.  
d/b/a STAGE STORES, INC.

X IBERIA PARISH, LOUISIANA

### ORDER

Considering the above verified petition:

LET ANGELA BOUTTE be and she is hereby permitted to prosecute this action  
without prior payment of costs or as they accrue and without giving bond for costs  
according to the provision of Louisiana Code of Civil Procedure, Articles 5181-5188.

New Iberia, Louisiana, this 1 day of December, 1998.

Is/ Anne L. Lannan Simon  
JUDGE



STATE OF LOUISIANA

X

PETITIONER'S AFFIDAVIT

X

PARISH OF Lafayette

X

BEFORE ME, the undersigned authority, personally came and appeared

ANGELA BOUTTE

who, being duly sworn, according to law, deposed and said that:

She is a citizen of this state and is presently domiciled in the Parish of Iberia, State of Louisiana; is unable, because of poverty and lack of means, to prepay the cost of these proceedings, or as they accrue or to give bond for costs; is entitled to file and prosecute this action under the provisions of the Louisiana Code of Civil Procedure Article 5181, et seq; and all of the allegations contained in the Petition for Damages and Request to Proceed in Forma Pauperis are true and correct to the best of her knowledge.

Angela Boutte  
Angela Boutte

SWORN TO AND SUBSCRIBED BEFORE ME THIS 20<sup>th</sup> DAY OF NOVEMBER, 1998.

Clint D. Bischoff  
Clint D. Bischoff - Notary Public

\*\*\*\*\*

STATE OF LOUISIANA

THIRD PARTY AFFIDAVIT

PARISH OF Lafayette

BEFORE ME, the undersigned authority, personally came and appeared

who, being duly sworn, according to law, deposed and said that:

She is a resident of Lafayette Parish, Louisiana, and knows Angela Boutte's financial condition and firmly believes that the said Angela Boutte is unable to pay costs of this action in advance, or as they accrue.

Mande D. Boutte

SWORN TO AND SUBSCRIBED BEFORE ME, THIS 20<sup>th</sup> DAY OF NOVEMBER, 1998.

Clint D. Bischoff  
Clint D. Bischoff - Notary Public

## FACTS CONCERNING PAUPER

1. FULL NAME: Angela Boutte
2. ADDRESS : 123 Bayou Dr. - Lot 3  
STREET OR BOX NUMBER  
New Iberia 70560  
CITY OR TOWN STATE
3. PHONE NO. 364-8810 Clyde's Hair Designers  
HOME PLACE OF EMPLOYMENT
4. BIRTH DATE: 3/26/65 437-82-7418  
MM/DD/YY SOCIAL SECURITY NO.
5. MARITAL STATUS: SINGLE X  
MARRIED \_\_\_\_\_  
SEPARATED \_\_\_\_\_  
DIVORCED X  
WIDOWED \_\_\_\_\_
6. ARE YOU PRESENTLY EMPLOYED?  
YES X NO \_\_\_\_\_  
FURNISH THE FOLLOWING INFORMATION RELATING TO YOUR PRESENT OR  
LAST EMPLOYMENT:  
NAME OF EMPLOYER: Clyde's Hair Designers  
ADDRESS : 907 Center St., New Iberia, LA 70560  
PHONE NO. : 369-9440  
LENGTH OF EMPLOYMENT 3 years (working part-time now)  
WAGES: WEEKLY \$ 200.00 (net) MONTHLY \$ \_\_\_\_\_  
(\$700.00 net before injury)
7. IF MARRIED AND LIVING WITH SPOUSE: .  
SPOUSE'S NAME: N/A  
NAME AND ADDRESS OF SPOUSE'S EMPLOYER, IF ANY:  
N/A  
WAGES: WEEKLY \$ \_\_\_\_\_ MONTHLY \$ \_\_\_\_\_
8. DO YOU OWN AND/OR ARE BUYING YOUR HOME?  
YES \_\_\_\_\_ NO X  
ADDRESS \_\_\_\_\_  
VALUE OF HOME \$ \_\_\_\_\_  
BALANCE OWED \$ \_\_\_\_\_
9. DO YOU OWN OR HAVE AN INTEREST IN ANY OTHER LAND?  
YES \_\_\_\_\_ NO X
10. DO YOU OWN OR HAVE INTEREST IN ANY OF THE FOLLOWING?

11. IS ANYONE DEPENDANT UPON YOU FOR SUPPORT? yes

IF YOUR ANSWER IS YES, STATE THEIR NAMES, AGES, AND RELATIONSHIP.

Dustin Boutte - son - 16  
Kristen Boutte - daughter - 14

12. LIST ANY DEBTS YOU MAY HAVE:  
CREDITOR:

AMOUNT OWED:

Allstate Credit  
Guloco Finance  
Iberia General  
Sugarland Pest Control

700.00  
700.00  
293.00  
120.00

13. LIST YOUR MONTHLY LIVING EXPENSES:

Gas - \$40.00 Cable \$50.00  
Electric - \$115.00 food \$600.00  
Phone - \$49.00  
Water - \$40.00

14. DO YOU HAVE ANY INCOME OR ASSET WHICH IS NOT SHOW ABOVE?

YES X NO        IF YES, EXPLAIN FULLY. \$60.00 per mo. child support

15. WHAT ARRANGEMENT HAVE YOU MADE WITH YOUR ATTORNEY TO PAY HIS FEE AND WHAT AMOUNT, IF ANY, HAVE YOU PAID? (YOU ARE REQUIRED TO ANSWER FULLY) 1/3 of amount settled for

16. HAS YOUR ATTORNEY EXPLAINED TO YOU THAT IT IS A CRIME FOR WHICH YOU COULD BE SENT TO THE PENITENTIARY IF YOU HAVE INTENTIONALLY GIVEN A FALSE ANSWER TO ANY OF THE ABOVE? (R.S. 14:123)

YES X NO       

17. HAS YOUR ATTORNEY ADVISED YOU THAT YOU WILL BE RESPONSIBLE FOR THE PAYMENT OF COURT COSTS IF JUDGMENT IS RENDERED AGAINST YOU?

YES X NO       

SIGNATURE X

PLAINTIFF-DEFENDANT

## EXHIBIT “B”



ROBERT K. GUILLORY  
CLINT D. BISCHOFF

## ROBERT K. GUILLORY & ASSOCIATES

A PROFESSIONAL LAW CORPORATION

128 DEMANADE BLVD., SUITE 300  
P. O. BOX 53478  
LAFAYETTE, LA 70505-3478  
PHONE (337) 234-0500  
FAX (337) 234-0560

June 29, 2000

1050 WEST LAUREL  
P. O. BOX 151  
EUNICE, LA 70535  
PHONE (337) 457-3322  
FAX (337) 457-0011

Mr. Keith Borne  
Borne, Wilkes, & Brady L.L.P  
P.O. Box 4305  
Lafayette, LA 70502-4305

RE: Angela Boutte

Dear Keith:

This letter will serve as a settlement proposal in the above referenced matter.

**A. LIABILITY**

For the sake of settlement negotiations at this juncture, defendant is presumed to be 100% liable for the injuries discussed below.

**B. BACKGROUND ON PLAINTIFF**

Ms. Boutte was born on March 26, 1965. On the date of the accident, 8/9/98, she was 33 years of age. She is a single parent of her two children, Dustin, age 16 and Kristen, age 15. Ms. Boutte completed the eleventh grade in high school and then attended beauty school at the Academy of Hair Design. She graduated from beauty school, and also received her G.E.D., approximately fifteen years ago. Since graduation, she has worked as a hair stylist/hair designer.

Ms. Boutte did not suffer from any disc defect prior to this accident. She was pain free in her back and neck before this accident. She has no history of arrests or convictions. In short, she is a devoted mother and has worked since leaving high school to provide for her family. Her clients in New Iberia in her occupation included many of the attorneys and other professionals in the area.

**C. INJURIES**

**1. Overview**

The injuries suffered by Ms. Boutte were caused by the trauma she received to her mid and lower back when she was struck by the butt-end of a metal clothes rack. When the butt-end

of the clothes rack struck Ms. Boutte, she was bending over looking at an article of clothing. She immediately felt/heard something pop/crack in her mid back.

The primary injury caused by the force of the blow was a central to right lateral disc herniation at L5-S1 with an extruded disc fragment impinging on nerve roots. The disc herniation has and continues to produce numerous problems, including loss of bowel control and loss of right leg control at times, that have and will continue to severely affect Ms. Boutte's life.

She also is suffering from pain in her neck along with associated headaches. The neck pain radiates into her right shoulder. She has a partial loss of sensation and feeling in her right arm and hand. The numerous falls due to the loss of motor function in the right leg are a substantial contributing cause of the nagging neck, shoulder, and right arm/hand pain and numbness.

Additionally, she also is now experiencing pain in the low back that radiates into her left leg on a more regular basis. The explanation is that her disc herniation is central at L5-S1 and at times impinges on nerve roots on the left side

She has suffered from bouts of severe depression and anxiety due to her injuries and fear of possible permanent back pain. She has considered professional counseling but has not been able to afford such treatment. Instead, she has received counseling from her parish priest on several occasions.

She has experienced a worsening of her pre-existing shingle condition. Although the cause of shingles is generally considered to be from a virus, severe stress and anxiety can trigger an attack of shingles. We submit this accident has aggravated such condition.

A substantial amount of pain medication is being used attempt to control the pain. However, the medication is becoming less effective and produces negative side effects. If she takes the prescribed amount of pain medication, she is so drowsy, she can hardly care for herself, much less her children. She also experiences nausea from some of her medications.

## **2. Disc Herniation At L5-S1**

Since the accident, Ms. Boutte has been experiencing a sharp, stabbing pain in her mid-low back, central to right, that radiates into her buttocks, right leg and foot, producing numbness. She has suffered an extreme loss of feeling in her right leg and foot such that she cannot feel a needle prick. Her symptoms have worsened as the months go by. She has suffered numerous falls documented by her treating physicians who noticed obvious bruising. These falls were caused by a loss of motor function in her right leg due to nerve root impingement. The falls have aggravated what was already a severe injury. Painful epidural blocks were not helpful in relieving the pain.

She has suffered a loss of control at times of her ability to urinate properly. She has to "shift positions" in an attempt to obtain a more normal bladder release. Although her numbness and pain have been primarily on the right side, she has started experiencing some left-sided

symptomology, similar to the right side, but not as severe. She was fitted with a special back brace, which has not helped very much.

Dr. Jarrott, the treating neurologist, has recommended a laminectomy at L-5 and at S-1, along with a discectomy. He is not sure if a fusion would be needed, and will address such issue at the time of surgery.

### **3. Cervical Strain/Headaches**

Ms. Boutte has received treatment from Dr. Lejeune and Dr. Jarrott for muscle spasms and pain in her cervical region. At the time of the accident, she was asymptomatic for pain in this area. Since the accident, she experiences frequent headaches on a regular basis, that are becoming more frequent.

Although the cervical MRI performed on 5/3/99 was interpreted as negative, the several falls she has suffered since that time, along with the increasing numbness and pain radiating into the right arm and hand, suggest more than a chronic muscle injury or inflammation.

### **4. Post Traumatic Stress Disorder**

Ms. Boutte has been prescribed medication to control the stress and anxiety caused by the disc herniation. Although she admitted to experiencing stress and anxiety at times prior to this accident, she explained the stress and anxiety was not near as significant before the accident as it has been since the accident.

### **5. Aggravation Of Shingles**

Extreme stress and anxiety can trigger an attack of shingles. Ms. Boutte was experiencing problems with shingles before this accident and has experienced problems since the accident. However, the frequency, duration and severity of the shingle attacks appear to be much worse than prior to this accident.

## **D. LOSS OF ENJOYMENT OF LIFE**

The severe injuries suffered by Ms. Boutte have devastated her life. The inability to work and earn an income to support her family has caused severe anxiety.

Her inability to provide for her children has also caused her significant stress. As a single mother having to care for her children, she knows that they look to her for financial and emotional guidance. In light of her overwhelming problems, she has not been able to care for them.

Driving is limited to short trips given the problems she has suffered with her right leg, etc. The problems she is experiencing with back pain, urinating, as well as, controlling her right leg, have resulted in a severe limitation of her activities. Further, the medications she is taking to subdue the pain, curtail her activities. In sum, the quality of her life has been decimated.

**E. LOSS OF WAGES THROUGH RECOVERY FROM SURGERY**

Ms. Boutte earned \$15,227 at Clyde's Hair Designs through September 19, 1998. She had to quit work due to severe back pain and nagging neck pain, etc. She did earn approximately \$300.00 by working at her home, as her condition would allow, during the remainder of 1998. She earned less than \$200 in 1999 by working out of her home for friends and family.

If we assume \$15,227 represents 8 ½ months of income, then 15,227 divided by 8 ½ totals \$1,791 in gross monthly income. Annualized, her lost income for 1998 is 3 ½ months multiplied by \$1,791, for total lost wages in 1998 of \$6,268.

Using the same assumptions, without factoring in an earnings increase, lost wages through 1999 would be \$21,492.

Assume she has surgery in the first week of January, 2000. Further assume she has a good recovery following lumbar surgery and is able to return to light duty work within 12 months of surgery. Lost wages, assuming no wage increase, through 12 months of recovery would total \$21,492.

In sum, lost wages through recovery from surgery as of January 2001 would total \$49,252.

**F. PARTIAL LOSS OF WAGES FOLLOWING RETURN TO WORK**

**(1) Diminished Earning Capacity**

Further assume Ms. Boutte has a diminished earning capacity such that she is only able to work one-half the hours she previously worked. We would expect Mr. Glenn Hebert, an expert in vocational rehabilitation, to testify that statistics show injured persons who undergo successful lumbar surgery still are usually only able to work, over their work life, approximately one-half of the number of hours worked before the accident. Dr. Jarrott reported in his letter dated 9/28/99 attached hereto as part of Exhibit B, that he would assign a 20% impairment with a 10 lb. lifting restriction.

If we assume a fifty week work year, then with a fifty percent loss of earning capacity, she only would work 25 weeks at 40 hours per week. The requirements of her work as a hair stylist demand bending, stooping, and working with arms somewhat outstretched over at least eight hours. We suggest her future loss of income based on her diminished capacity should be based on earnings at \$6.00 per hour rather than assuming she could earn one-half of her pre-accident income for the remainder of her work life.

Her future income per year following January 1, 2001 ( assuming she never earns more than \$6.00 per hour in the remainder of her work life) for the rest of her work life would total \$6000 (\$6.00 x 40 hours x 25 weeks).



**(2.) Work Life Expectancy**

Using a standard future damage calculator, Ms. Boutte would have a work life expectancy of 18.1 years as a white female 36 years of age (she would be 36 as of March 2001).

**(3.) Total Loss of Future Wages**

Subtracting her pre-accident annual income of \$21,492 from her post-surgery diminished earning capacity income of \$6000 per year totals \$15,492 as her loss of income. Multiplying \$15,492 by her 18.1 year work life expectancy totals \$280,405 in future loss of earnings.

For trial purposes, we would present evidence her income would have increased and her goal was to open her own beauty salon. For settlement purposes, we will use her pre-accident income as the benchmark.

**(4.) Total Loss of Future Wages Discounted to Present Value**

Using the future damage calculator, and assuming a 1 ½ rate of interest, the present value multiplier is 15.6726. Multiplying 15.6726 by the loss of future annual gross earnings of \$15,492, totals \$242,799 as the present value of the loss of future earnings. See *Jaffarzad v. Jones Truck Lines, Inc.*, 561 So.2d 141 (La. App. 3 Cir. 1990), writ den. 565 So.2d 450 (La.1990).

**G. SUMMARY OF PAST AND FUTURE WAGE LOSS**

1. **\$49,252:** 8/9/98 (d.o.a.) to 1/1/2001 (projected work return date assuming surgery on 1/1/2000);
2. **\$242,799:** (1/2/2001 thru. 18.1 year work life discounted present value);
3. **TOTAL = \$292,051**

**H. PAST MEDICALS**

1.	Dr. Gerald J. Elias, Jr.	\$385.00
2.	Dauterive Hospital	\$109.78
3.	Dr. Harold J. Hebert, Jr.	\$334.00
4.	Dr. Jeffery J. Laborde	\$2570.00
5.	Iberia Medical Center	\$651.50
6.	Dr. David Jarrott	\$1435.00
7.	Dr. Robert Lejeune	\$1415.00
8.	South La. Anesthesiology	\$475.00
9.	Dr. Pavy	\$30.00
10.	Dr. Sagrera	\$102.19
11.	Walgreens	\$1,569.02
12.	Super 1	\$521.00

13.	Eckerd's	\$331.15
14.	Rite Aid	<u>\$13.50</u>
		\$9,942.14*

1. \*Denotes we do not have a complete total on medicals.
2. Copies of all invoices are attached as Exhibit A.

#### **I. FUTURE MEDICALS**

As per the letter from Dr. Jarrott dated 6/29/99 attached as Exhibit B, his projected costs, and that of the hospital for the recommended surgery, assuming no complications, are:

- a. L5 laminectomy : 8,000;
  - b. S1 laminectomy : 6,000;
  - c. Discectomy : 8,000;
  - d. Post-op. Care : 1,200;
  - e. Hospital charges: 26,500;
- \$ 49,700

See also Dr. Jarrott's letter dated 9/28/99 discussing her current status. Follow up diagnostic tests are estimated at \$1200 to evaluate the results of surgery.

In sum, assuming an excellent result, the total future medical costs are **\$50,900**. This assumes she will not need medications to control pain following surgery and further assumes she will require no further treatment following the one-year post operation follow-up by Dr. Jarrott.

#### **J. THIRD CIRCUIT AWARDS FOR SIMILAR LUMBAR SURGERIES**

**200,000** In *Grey v. Texaco, Inc.*, 610 So.2d 1090 (La. App. 3 Cir. 1993), the court reversed the trial court's JNOV, which had zeroed the plaintiff, and awarded in general damages 100,000 for past pain and suffering, 50,000 for future pain and suffering and 50,000 for 15-20 % disability. Plaintiff suffered a herniation at L5-S1 and underwent a laminectomy 14 months after the accident. The surgery was a success but plaintiff was still recovering when the case went to trial 12 months post-surgery. Plaintiff was assigned a 15-20% disability with a restriction from heavy lifting and was limited to light or sedentary work.

The court in *Grey*, supra, addressed the factors used in assessing quantum. First, the court noted plaintiff was in increasing back pain from the date of the accident until surgery. Although surgery was a success, plaintiff still had intermittent periods of pain and would likely continue with intermittent pain. Dr. Blanda testified it usually takes 1 to 1 1/2 years to recover from back surgery to achieve maximum results.

In our case, plaintiff has suffered to date 14 months. If this case were to go to trial, we would expect a trial date in about 12 months. We too would expect a 15 % to 20 % impairment because the demands of working 8 hours bending, stooping, and standing will most likely aggravate the back injury, even assuming a good result following surgery.

**150,000** In *Oliver v. Lejeune*, 649 So.2d 753 (La. App. 3 Cir. 1994), the court reversed the jury's \$1000 general damages award and increased such award to 150,000 for past, present and future pain and suffering for an aggravation of a pre-existing congenital defect at L5-S1, without surgery. Past medicals for conservative treatment totaled \$8,335. The cost of lumbar surgery was stipulated to be \$29, 500, which included the anesthesiologist fee. The award for the cost of surgery would have to be dramatically increased to reflect the current cost of such treatment in our case.

**150,000** In *Hoback v. Kmart Corp.*, 628 So.2d 1258 (La. App. 3 Cir. 1993), the court increased the jury's \$10,000 general damages award to \$150,000, as the "lowest amount" reasonable for a plaintiff who underwent a bilateral discectomy and fusion at L5-S1. Prior to the accident, plaintiff had a herniated disc but with no nerve root impingement. The general damages award was for the percent of aggravation of the pre-existing injury. The surgery was successful. Dr. Blanda projected a 1 1/2 year period of recovery. Medicals incurred totaled \$28,216. But for the pre-existing condition, we submit the court would have awarded substantially more considering a fusion was done.

In sum, if we assume a successful surgery that allows Ms. Boutte to return to light duty work, one year post surgery, we would expect the lowest award for past, present, and future pain and suffering and loss of enjoyment of life allowable by the Third Circuit to be between \$150,000 and \$200,000.

#### **K. LEGAL INTEREST**

The legal interest for 1998 and 1999 is 7.60 and 6.73, respectively, For simplicity, the average rate for the two years is 7.2 %. I have been informed the legal rate of interest will increase for 2000, but such rate is not official yet, and so I do not have the amount. Suit was filed on November 30, 1998. The Legal Interest set forth in the Judgment Value section below, assumes a trial date of November 30, 2000 and assumes an average rate of 7.2%, for ease of calculation. The average will actually be higher once the 2000 legal interest is included.

Multiplying total general and special damages by 7.2 % and dividing the product by 365 days to get the per diem will result in a per diem of 122.48. Assuming 730 days from the date of filing of suit to trial, results in legal interest of 89,407.17, assuming a general and special verdict as projected below.

#### **L. JUDGMENT VALUE**

A jury could award the following and not be reversed by the Third Circuit as excessive:

##### **A. Past and Future Pain and Suffering and Loss of Enjoyment of Life**

- |    |   |              |
|----|---|--------------|
| 1. | Herniation at L5-S1 with nerve root impingement with laminectomy and discectomy | \$200,000.00 |
| 2. | Cervical Strain and Headaches   | \$ 20,000.00 |

3.	Aggravation of Shingles	\$ 3,000.00
4.	Post Traumatic Stress/Major Depression	\$ 15,000.00
5.	15-20% Permanent Disability	\$ <u>30,000.00</u>
	Subtotal	<b>\$268,000.00</b>

**B. PAST MEDICALS** \$ 9,942.14\*

**C. FUTURE MEDICALS** \$ 50,900.00

**D. PAST LOST WAGES** \$ 49,242.00  
(8/9/98 to 1/1/2001)

**E. FUTURE LOST WAGES** \$242,799.00  
(1/2/2001 thru. work life discounted to present value)

**F. TOTAL GENERAL /SPECIAL DAMAGES** \$620,883.14

**G. LEGAL INTEREST** \$ 89,407.17  
(assumes 7.2% and trial on 11/30/2000)

**H. TOTAL PROBABLE JUDGMENT VALUE** **\$710,290.31**

**M. SETTLEMENT OFFER**

We submit the following offer as a good faith starting point in negotiations:

1.	General damages	\$230,000
2.	Past medicals	\$ 9,942
3.	Future medicals	\$ 50,900
4.	Past lost wages	\$ 49,242
5.	Future lost wages	\$150,000
6.	Legal interest	<u>\$ 25,000</u>
	<b>TOTAL</b>	<b>\$515,084</b>

I look forward to hearing from you to discuss this matter.

With kindest personal regards, I remain

Sincerely,

  
Clint D. Bischoff

CDB: mb  
Enclosures

# D M Jarrott A Professional LLC

Neurological Surgery  
Post office Box 55940  
Metairie, Louisiana 70055-5940

Lafayette (318) 216-0225  
Fax (318) 216-0227

New Orleans (504) 244-8925  
Fax (504) 246-9194

Mandeville (504) 727-9342  
Fax (504) 727-9345

Hammond (504) 345-4084  
Fax (504) 345-4064

Kenner (504) 441-8500  
Fax (504) 441-8502

A/FU  
BOU90928.WPD

FOLLOW-UP OFFICE VISIT  
September 28, 1999

Clint Bischoff  
Robert K. Guillory and Associates  
Attorney at Law  
P.O. Box 53478  
Lafayette, LA 70505-3478

RE: Angela Boutte

Dear Mr. Bischoff

Angela Boutte's clinical status was re-addressed on September 28, 1999, referable to injuries sustained on the motor vehicle accident of August 9, 1998.

She complained of neck pain, right shoulder pain, and shingles. She fell down when the leg gave out. She mentions that she passed kidney stones X6 with development of shingles. She is currently taking Lortab, Soma, Xanax, Quinam, and Neurontin.

## Neurosurgical Examination:

The cervical spine demonstrated a range of motion of 75%. The cervical paraspinous muscles were mildly tender. The cervical interspinous ligaments were mildly tender. The lumbar spine demonstrated a forward flexion of 60°.

The lumbar paraspinous muscles were moderately tender with moderate spasms upon palpation. The lumbar interspinous ligament were moderately tender. The straight leg raising test produced no pain. The lumbar spine innervated area showed no diminished sensation. The lumbar spine innervated area showed no strength deficit. The ankle reflexes showed no deficit.

The MRI Scan of May 3, 1999 showed L5-S1 large prolapse.

The diagnosis is L5-S1 disc syndrome (degenerative prolapse with neuralgia); nephrolithiasis; H. Zoster. I need to review the MRI Scan films in order to evaluate the spine.

She will need surgery X1 or more on L5-S1 disc.

The estimated costs are \$40,000.00. When surgery success is experienced she will have a 20% disability and be able to lift 10 pounds.

The disability status remains unchanged. She is 100% disabled. The pain guidelines criteria were discussed. The Tylenol risks were explained and the patient was instructed about them.